

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

GARY L. DAVIS,

Plaintiff,

v.

CIVIL ACTION NO. 2:04-0360

JO ANNE B. BARNHART,
Commissioner of Social
Security,

Defendant.

MEMORANDUM OPINION AND ORDER

By Standing Order entered on May 20, 2002, and filed in this case on April 14, 2004, this action was referred to United States Magistrate Judge Mary E. Stanley for submission of proposed findings and recommendation. Magistrate Judge Stanley submitted her proposed findings and recommendation on April 14, 2004. In that Proposed Findings and Recommendation, the magistrate judge recommended that this court grant the plaintiff's motion for judgment on the pleadings to the extent he seeks remand, deny the remaining portions of the plaintiff's motion, deny the defendant's motion for judgment on the pleadings, reverse the final decision of the Commissioner and remand this case for further proceedings pursuant to the fourth sentence of 42 U.S.C. § 405(g).

In accordance with the provisions of 28 U.S.C. § 636(b), the parties were allotted ten days, plus three mailing days, in which to file any objections to Magistrate Judge Stanley's Findings and


Recommendation. No party has filed objections within the requisite period, and the failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Thomas v. Arn, 474 U.S. 140 (1985); Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

Having reviewed the Proposed Findings and Recommendation filed by the magistrate judge, the court adopts the findings and recommendations contained therein. Accordingly, the court hereby GRANTS the plaintiff's motion for judgment on the pleadings (Doc. No. 14) to the extent it seeks remand, DENIES plaintiff's motion in all other respects, DENIES the defendant's motion for judgment on the pleadings (Doc. No. 20), and REVERSES the final decision of the Commissioner. The court REMANDS this case for further proceedings pursuant to 42 U.S.C. § 405(g) in accordance with Judge Stanley's findings and recommendation and ORDERS that this matter be removed from the court's docket.

The Clerk is directed to forward a certified copy of this memorandum opinion and order to all counsel of record.

IT IS SO ORDERED this 9th day of May, 2005.

ENTER:



David A. Faber
Chief Judge